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October 24, 2021

BY ECF

The Honorable Norman K. Moon
United States District Court
Western District of Virginia
255 West Main Street
Charlottesville, VA 22902

Re: *Sines et al. v. Kessler et al.*, No. 3:17-cv-00072 (NKM) (JCH)

Dear Judge Moon:

Plaintiffs write concerning the preliminary jury instructions that the Court intends to give to the jury before the commencement of trial. On October 22, 2021, during the final pretrial conference, the Court directed Plaintiffs to submit a proposed list of preliminary instructions that are, in Plaintiffs' view, particularly important. Tr. of Pretrial Hr'g at 95-96, *Sines v. Kessler*, No. 3:17-cv-72 (W.D. Va. Oct. 22, 2021). In accordance with that order, Plaintiffs respectfully request that the Court give the preliminary instructions set forth in Exhibit A.

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The proposed preliminary instructions touch on two substantive areas that will be particularly helpful for the jury: (1) instructions on general principles of conspiracy law, and (2) instructions concerning the evidentiary sanctions the Court has granted, including the evidentiary sanctions Judge Hoppe recently granted against Defendant Matthew Heimbach, ECF No. 1295. As various judicial resources recognize, jurors can deal more effectively with evidence in a lengthy trial if they are provided with a legal framework to give structure to what they see and hear. *E.g.*, Manual for Complex Litigation § 12.432, at 154-55 (4th ed. 2004).

In this case, instructing the jury on basic principles of conspiracy law would be particularly helpful, as the existence of—and Defendants' membership in—the alleged conspiracy will be one of the central issues the jurors must decide.¹ Each of Plaintiffs' proposed instructions is modeled on an instruction which Your Honor has given in other cases that involved conspiracy allegations. Exhibit A and accompanying citations.

In addition, the proposed preliminary instructions concerning evidentiary sanctions are relevant to the jury's understanding of Plaintiffs' presentation of the case. Consistent with the Court's orders, and as Defendants themselves have recognized, these instructions are carefully tailored to explain the meaning of the Court-imposed sanctions while avoiding any potential spillover effects. Tr. of Motion Hr'g at 8-9, *Sines v. Kessler*, No. 3:17-cv-72 (W.D. Va. Oct. 18, 2021).

Very truly yours,

A handwritten signature in blue ink, appearing to read 'K. Dunn', is written over a horizontal line.

Karen L. Dunn

¹ In the interest of streamlining the Court's preliminary address to the jury, Plaintiffs have not proposed preliminary instructions on the substantive elements of Plaintiffs' claims. However, Plaintiffs respectfully reserve the right to propose preliminary instruction on those elements if the Court deems it appropriate to instruct the jury on those issues.

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2021, I served the following via electronic mail:

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I hereby certify that on October 24, 2021, I also served the following via mail and electronic mail:


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A handwritten signature in blue ink, appearing to read 'K. Dunn', is written over a horizontal line.

Karen L. Dunn